

## **IC 31-17-2**

### **Chapter 2. Actions for Child Custody and Modification of Child Custody Orders**

## **IC 31-17-2-1**

### **Jurisdiction**

Sec. 1. Jurisdiction of a child custody proceeding under:

- (1) this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7; or
- (2) IC 31-17-3;

shall be determined under IC 31-17-3.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-2**

### **Application of Indiana Rules of Civil Procedure**

Sec. 2. Proceedings under this chapter, IC 31-17-4, IC 31-17-6, and IC 31-17-7 must comply with the Indiana Rules of Civil Procedure.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-3**

### **Commencement of proceeding**

Sec. 3. A child custody proceeding is commenced in the court by:

- (1) a parent by filing a petition under IC 31-15-2-4, IC 31-15-3-4, or IC 31-16-2-3; or
- (2) a person other than a parent by filing a petition seeking a determination of custody of the child.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-4**

### **Notice of intent to move residence**

Sec. 4. If the party seeking custody intends to move the party's residence:

- (1) at the time of or after the granting of a final order under IC 31-15-2-16, IC 31-15-3-9, or IC 31-16-2-8 (or IC 31-1-11.5-9 before its repeal); and
- (2) to a place:

(A) outside Indiana; or

(B) at least one hundred (100) miles from the residence specified in the party's pleadings;

the party must file a notice of that intent with the clerk of the court and send a copy of the notice to the other party.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-5**

### **Responsive pleading or counter petition**

Sec. 5. A responsive pleading or a counter petition may be filed under this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7.

*As added by P.L.1-1997, SEC.9.*

## **IC 31-17-2-6**

**Hearing**

Sec. 6. Custody proceedings must receive priority in being set for hearing.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-2-7****Court to determine law and facts**

Sec. 7. The court without a jury shall determine questions of law and fact.

*As added by P.L.1-1997, SEC.9.*

**IC 31-17-2-8****Custody order**

Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.
- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic or family violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.7; P.L.133-2002, SEC.32.*

**IC 31-17-2-8.3****Supervised parenting time; crime involving domestic or family violence**

Sec. 8.3. (a) This section applies if a court finds that a noncustodial parent has been convicted of a crime involving domestic or family violence that was witnessed or heard by the noncustodial parent's child.

(b) There is created a rebuttable presumption that the court shall order that the noncustodial parent's parenting time with the child

must be supervised:

- (1) for at least one (1) year and not more than two (2) years immediately following the crime involving domestic or family violence; or
- (2) until the child becomes emancipated;

whichever occurs first.

*As added by P.L.133-2002, SEC.33. Amended by P.L.68-2005, SEC.32.*

### **IC 31-17-2-8.5**

#### **Consideration of de facto custodian factors**

Sec. 8.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.

(b) In addition to the factors listed in section 8 of this chapter, the court shall consider the following factors in determining custody:

- (1) The wishes of the child's de facto custodian.
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- (3) The intent of the child's parent in placing the child with the de facto custodian.
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to:
  - (A) seek employment;
  - (B) work; or
  - (C) attend school.

(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.

(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.

(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.

*As added by P.L.96-1999, SEC.8.*

### **IC 31-17-2-9**

#### **Court interview of child in chambers**

Sec. 9. (a) The court may interview the child in chambers to ascertain the child's wishes.

(b) The court may permit counsel to be present at the interview. If counsel is present:

- (1) a record may be made of the interview; and
- (2) the interview may be made part of the record for purposes of appeal.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-10**

#### **Professional personnel; court consultation; cross-examination**

Sec. 10. (a) The court may seek the advice of professional personnel even if the professional personnel are not employed on a regular basis by the court. The advice shall be given in writing and made available by the court to counsel upon request.

(b) Counsel may call for cross-examination of any professional personnel consulted by the court.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-11**

#### **Temporary custodian**

Sec. 11. (a) If, in a proceeding for custody or modification of custody under IC 31-15, this chapter, IC 31-17-4, IC 31-17-6, or IC 31-17-7, the court:

(1) requires supervision during the noncustodial parent's parenting time privileges; or

(2) suspends the noncustodial parent's parenting time privileges; the court shall enter a conditional order naming a temporary custodian for the child.

(b) A temporary custodian named by the court under this section receives temporary custody of a child upon the death of the child's custodial parent.

(c) Upon the death of a custodial parent, a temporary custodian named by a court under this section may petition the court having probate jurisdiction over the estate of the child's custodial parent for an order under IC 29-3-3-6 naming the temporary custodian as the temporary guardian of the child.

*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.33.*

### **IC 31-17-2-12**

#### **Investigation and report concerning custodial arrangements for child**

Sec. 12. (a) In custody proceedings after evidence is submitted upon the petition, if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by any of the following:

(1) The court social service agency.

(2) The staff of the juvenile court.

(3) The local probation department or the county office of family and children.

(4) A private agency employed by the court for the purpose.

(5) A guardian ad litem or court appointed special advocate appointed for the child by the court under IC 31-17-6 (or IC 31-1-11.5-28 before its repeal).

(b) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for

diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. However, the child's consent must be obtained if the child is of sufficient age and capable of forming rational and independent judgments. If the requirements of subsection (c) are fulfilled, the investigator's report:

- (1) may be received in evidence at the hearing; and
- (2) may not be excluded on the grounds that the report is hearsay or otherwise incompetent.

(c) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days before the hearing. The investigator shall make the following available to counsel and to any party not represented by counsel:

- (1) The investigator's file of underlying data and reports.
- (2) Complete texts of diagnostic reports made to the investigator under subsection (b).
- (3) The names and addresses of all persons whom the investigator has consulted.

(d) Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party to the proceeding may not waive the party's right of cross-examination before the hearing.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-13**

#### **Joint legal custody; finding required for award**

Sec. 13. The court may award legal custody of a child jointly if the court finds that an award of joint legal custody would be in the best interest of the child.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-14**

#### **Joint legal custody; division of physical custody**

Sec. 14. An award of joint legal custody under section 13 of this chapter does not require an equal division of physical custody of the child.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-15**

#### **Joint legal custody; matters considered in making award**

Sec. 15. In determining whether an award of joint legal custody under section 13 of this chapter would be in the best interest of the child, the court shall consider it a matter of primary, but not determinative, importance that the persons awarded joint custody have agreed to an award of joint legal custody. The court shall also consider:

- (1) the fitness and suitability of each of the persons awarded joint custody;
- (2) whether the persons awarded joint custody are willing and

able to communicate and cooperate in advancing the child's welfare;

(3) the wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age; and

(4) whether the child has established a close and beneficial relationship with both of the persons awarded joint custody;

(5) whether the persons awarded joint custody:

(A) live in close proximity to each other; and

(B) plan to continue to do so; and

(6) the nature of the physical and emotional environment in the home of each of the persons awarded joint custody.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-16**

#### **Counseling for child**

Sec. 16. Upon:

(1) the court's own motion;

(2) the motion of a party;

(3) the motion of the child;

(4) the motion of the child's guardian ad litem; or

(5) the motion of the court appointed special advocate;

the court may order the custodian or the joint custodians to obtain counseling for the child under such terms and conditions as the court considers appropriate.

*As added by P.L.1-1997, SEC.9. Amended by P.L.129-2005, SEC.2.*

### **IC 31-17-2-17**

#### **Custodian may determine child's upbringing**

Sec. 17. (a) Except:

(1) as otherwise agreed by the parties in writing at the time of the custody order; and

(2) as provided in subsection (b);

the custodian may determine the child's upbringing, including the child's education, health care, and religious training.

(b) If the court finds after motion by a noncustodial parent that, in the absence of a specific limitation of the custodian's authority, the child's:

(1) physical health would be endangered; or

(2) emotional development would be significantly impaired;

the court may specifically limit the custodian's authority.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-18**

#### **Continuing supervision**

Sec. 18. If both parents or all contestants agree to the order or if the court finds that, in the absence of the order, the child's physical health might be endangered or the child's emotional development significantly impaired, the court may order:

(1) the court social service agency;

(2) the staff of the juvenile court;  
(3) the local probation department;  
(4) the county office of family and children; or  
(5) a private agency employed by the court for that purpose;  
to exercise continuing supervision over the case to assure that the  
custodial or parenting time terms of the decree are carried out.  
*As added by P.L.1-1997, SEC.9. Amended by P.L.68-2005, SEC.34.*

#### **IC 31-17-2-19**

##### **Travel and other expenses of witnesses**

Sec. 19. The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court considers necessary to determine the best interests of the child.  
*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-20**

##### **Confidentiality of interview, report, or investigation**

Sec. 20. If the court finds it necessary to protect the child's welfare that the record of any interview, a report, or an investigation in a custody proceeding not be a public record, the court may make an appropriate order accordingly.  
*As added by P.L.1-1997, SEC.9.*

#### **IC 31-17-2-21**

##### **Modification of child custody order**

Sec. 21. (a) The court may not modify a child custody order unless:  
(1) the modification is in the best interests of the child; and  
(2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 and, if applicable, section 8.5 of this chapter.  
(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.  
(c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 and, if applicable, section 8.5 of this chapter.  
*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.9.*

#### **IC 31-17-2-21.5**

##### **Security, bond, or guarantee**

Sec. 21.5. The court may provide in:  
(1) a custody order; or  
(2) a modification to a custody order;  
for the security, bond, or other guarantee that is satisfactory to the court to secure enforcement of the custody order.  
*As added by P.L.171-2001, SEC.11.*

### **IC 31-17-2-21.7**

#### **Security, bond, or guarantee; determinations**

Sec. 21.7. (a) The court shall consider requiring security, a bond, or another guarantee under section 21.5 of this chapter if the court makes a finding under subdivision (1), (2), (4), or (7) by clear and convincing evidence. If the court makes a finding under subdivision (1), (2), (4), or (7), the court shall also consider subdivisions (3), (5), (6), (8), and (9) in determining the amount of security, bond, or other guarantee. In making a determination under this section, the court shall consider the following:

- (1) Whether a party has previously taken a child out of Indiana or another state in violation of a custody, parenting time, or visitation order.
- (2) Whether a party has previously threatened to take a child out of Indiana or another state in violation of a custody, parenting time, or visitation order.
- (3) Whether a party has strong ties to Indiana.
- (4) Whether a party:
  - (A) is a citizen of another country;
  - (B) has strong emotional or cultural ties to the other country;
  - and
  - (C) has indicated or threatened to take a child out of Indiana to the other country.
- (5) Whether a party has friends or family living outside Indiana.
- (6) Whether a party does not have a financial reason to stay in Indiana, such as whether the party is unemployed, able to work anywhere, or is financially independent.
- (7) Whether a party has engaged in planning that would facilitate removal from Indiana, such as quitting a job, selling the party's primary residence, terminating a lease, closing an account, liquidating other assets, hiding or destroying documents, applying for a passport, applying for a birth certificate, or applying for school or medical records.
- (8) Whether a party has a history of marital instability, a lack of parental cooperation, domestic violence, or child abuse.
- (9) Whether a party has a criminal record.

After considering evidence, the court shall issue a written determination of security, bond, or other written guarantee supported by findings of fact and conclusions of law.

(b) If a motion for change of judge or change of venue is filed, the court may, before a determination of change of judge or change of venue, consider security, bond, or other guarantee under this chapter. *As added by P.L.171-2001, SEC.12. Amended by P.L.68-2005, SEC.35.*

### **IC 31-17-2-22**

#### **Custodial parent's violation of injunction or temporary restraining order considered in custody modification**

Sec. 22. An intentional violation by a custodial parent of an injunction or a temporary restraining order issued under IC 31-17-4-4



or IC 31-17-4-5 (or IC 31-1-11.5-26 before its repeal) may be considered a relevant factor under section 8 of this chapter that the court must consider in a proceeding for a custody modification under section 21 of this chapter.

*As added by P.L.1-1997, SEC.9.*

### **IC 31-17-2-23**

#### **Notice of intent to move residence; hearing to review and modify custody, parenting time, and support orders**

Sec. 23. (a) If an individual who has been awarded custody of a child under this chapter intends to move to a residence:

- (1) other than a residence specified in the custody order; and
- (2) that is outside Indiana or at least one hundred (100) miles from the individual's county of residence;

the individual must file a notice of the intent to move with the clerk of the court that issued the custody order and send a copy of the notice to a parent who was not awarded custody and who has been granted parenting time rights under IC 31-17-4 (or IC 31-1-11.5-24 before its repeal).

(b) Upon request of either party, the court shall set the matter for a hearing for the purposes of reviewing and modifying, if appropriate, the custody, parenting time, and support orders. The court shall take into account the following in determining whether to modify the custody, parenting time, and support orders:

- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for noncustodial parents to exercise parenting time rights.

(c) Except in cases of extreme hardship, the court may not award attorney's fees.

*As added by P.L.1-1997, SEC.9. Amended by P.L.96-1999, SEC.10; P.L.68-2005, SEC.36.*

### **IC 31-17-2-24**

#### **Notice of passport application for child**

Sec. 24. (a) If either party to the custody order applies for a passport for the child, the party who applies for the child's passport shall do the following not less than ten (10) days before applying for the child's passport:

- (1) File a notice of the passport application with the clerk of the court that issued the custody order.
- (2) Send a copy of the notice to the other party.

(b) The parties may jointly agree in writing to waive the requirements of subsection (a).

*As added by P.L.1-1997, SEC.9.*